

Message Text

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PAGE 01 BONN 07969 161551Z

43

ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOT-00 INR-07 NSAE-00 FAA-00 SSO-00 INRE-00 L-02

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O 161525Z MAY 75

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 0143

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E.O. 11652: N/A

TAGS: EAIR, US, GW

SUBJECT: CIVAIR: PAN AM COMMISSION PROBLEM

REF: MONROE-STYLES TELCOM OF MAY 15.

1. SUBSEQUENT TO REFERENCED TELECON EMB ASST CAA INFORMED PAA DIRECTOR RUNNETTE OF THE DEPARTMENT'S PRESENT THINKING ON THE ADVISABILITY OF PAA'S SUBMITTING AN APPLICATION TO THE FRG FOR AUTHORITY TO APPLY THE 3 PERCENT INCENTIVE COMMISSION PROGRAM IN COUNTRIES OTHER THAN THE FRG. RUNNETTE HAS NOW MADE AVAILABLE TO US A DRAFT TEXT OF THE LETTER OF APPLICATION, WHICH HAS BEEN SUBMITTED TO PAA HEADQUARTERS FOR FINAL APPROVAL.

2. TEXT OF PAA'S PROPOSED LETTER FOLLOWS:

QUOTE: WE ARE SUBMITTING HEREINAFTER OUR APPLICATION FOR APPROVAL OF A NEW COMMISSION EFFECTIVE MAY 1, 1975.

WE ARE SUBMITTING THIS APPLICATION IN VIEW OF THE LEGAL POSITION TAKEN BY YOUR OFFICE, ACCORDING TO WHICH COMMISSION AGREEMENTS WITH IATA TRAVEL AGENCIES WITHIN GERMANY, AS WELL AS ABROAD WHEN THEY INVOLVE TRANSPORTATION TO AND FROM THE FRG REQUIRE THE APPROVAL OF THE FEDERAL MINISTER OF TRANSPORTATION PURSUANT TO SECTION 21 PARA 1 LUFTVERKEHRSGESETZ AS WELL AS ARTICLE

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PAGE 02 BONN 07969 161551Z

11 LIT B OF THE GERMAN AMERICAN AIR TRANSPORT AGREEMENT.

WE WISH, HOWEVER, TO EXPRESSLY STATE THAT WE DO NOT CON-
CUR WITH THIS LEGAL POSITION. IN OUR OPINION COMMISSION
AGREEMENTS WITH IATA TRAVEL AGENCIES IN GERMANY OR
ABROAD DO NOT REQUIRE SUCH APPROVAL. WE SHARE THE OPIN-
ION OF THE U.S. GOVERNMENT THAT THE TERM - RATES - IN
ARTICLE 11 OF THE GERMAN-AMERICAN BILATERAL AIR AGREE-
MENT DOES NOT COVER COMMISSIONS AND ACCORDINGLY, PURSUANT
TO THIS AGREEMENT, COMMISSIONS ARE NOT SUBJECT TO THE
APPROVAL OF THE AERONAUTICAL AUTHORITIES OF THE CON-
TRACTING PARTIES. MOREOVER WE SHARE THE CONVICTION OF
THE U.S. GOVERNMENT THAT THE FRG HAS NO JURISDICTION
OVER COMMISSION AGREEMENTS WITH TRAVEL AGENTS IN THE
UNITED STATES. WE THEREFORE RESERVE OUR RIGHTS TO PUR-
SUE OUR LEGAL POSITION AT THE APPROPRIATE TIME. BY YOUR
LETTER OF APRIL 11, 1975 THE FEDERAL MINISTER OF TRANS-
PORT HAS PLACED AN ADMINISTRATIVE INJUNCTION ON PAN AM
WITH REGARD TO OUR INCENTIVE COMMISSION PLAN. ON THE
OTHER HAND YOU APPROVED FOR DLH AND OTHER EUROPEAN
CARRIERS THE IMPLEMENTATION OF A 7.5 PERCENT COMMISSION
RATE IN ACCORDANCE WITH THE IATA DOCUMENT 'AGENCY PRO-
GRAMME (NEW) 160/002B' EFFECTIVE MAY 1, 1975. IN ORDER
TO AVOID A SERIOUS COMPETITIVE DISADVANTAGE DURING THE
PENDENCY OF A LEGAL TEST OF THE BVM'S POSITION, AND TO
CLARIFY THE UNCERTAINTY IN THE MINDS OF GERMAN TRAVEL
AGENTS, PAN AM AGREES TO WITHDRAW ITS INCENTIVE COMMIS-
SION PLAN FROM APPLICATION INSIDE GERMANY AND REQUESTS
HEREWITH APPROVAL EFFECTIVE MAY 1, 1975 TO APPLY:

- A. THE COMMISSION RATE OF 7.5 PERCENT AS CONTAINED
IN THE AFOREMENTIONED IATA DOCUMENT ON ALL SALES
MADE WITHIN THE FRG. THIS ALSO APPLIES TO SALES
MADE WITHIN THE FRG IF THE TRANSPORTATION CON-
CERNED DOES NOT TOUCH THE FRG.
- B. THE EXISTING COMMISSION PLUS A COMMISSION OF
3 PERCENT ON ALL SALES WHICH EXCEED 90 PERCENT
OF THE SALES OF THE CORRESPONDING MONTH OF THE
PREVIOUS YEAR, ON SALES MADE BY IATA TRAVEL
AGENCIES ABROAD FOR TRANSPORTATION TO AND FROM
THE FRG.

IT IS UNDERSTOOD THAT THE AFOREMENTIONED LETTER OF APRIL
11, 1975 WILL BE SUPERCEDED BY THE APPROVAL OF THIS
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PAGE 03 BONN 07969 161551Z

APPLICATION. AS YOU KNOW WIDESPREAD FAILURE TO ABIDE BY
AGREED COMMISSION LEVELS LED PAN AM TO INTRODUCE THE
INCENTIVE COMMISSION PLAN. IT IS OUR UNDERSTANDING THAT
EVERY EFFORT WILL BE MADE TO STRICTLY ENFORCE FOR ALL
CARRIERS THE APPLICATION OF THE NEW COMMISSION WITHIN
GERMANY FROM MAY 1, 1975. UNQUOTE.
HILLENBRAND

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Margaret P. Grafeld
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